

REMARKS

Claims 1-42 are pending. Entry of the concurrently filed Request for Continued Examination and reconsideration of the application are requested in view of the remarks which follow.

As an initial matter, the undersigned Attorney thanks Examiner Parsons for the informal telephone discussion on February 5, 2009, during which the Declaration filed on December 23, 2008, was briefly discussed. Certain revisions to the Declaration were discussed in an effort to facilitate allowance of the application. In particular, the discussion focused on having inventor Peter Rezac join in the Declaration, as an inventor of one or more claims of the present invention. In accordance with that discussion, a revised Declaration under Rule 1.132 (signed by all 4 of the present inventors) is being submitted concurrently herewith and the Examiner is requested to reconsider the application in view thereof.

Claim Rejections under 35 USC §102(e)

Claims 1-42 stand rejected under 35 USC §102(e) over Osenar et al. (US 7,306,864).

Claims 1-42 stand further rejected under 35 USC §102(e) over Osenar et al. (WO 03/092096).

The Office Action expressly acknowledges that both of the applied Osenar references have a common inventor with the present application and that there is an opportunity to overcome each of the rejections by a showing that any invention disclosed but not claimed in the applied reference(s) was derived from the inventor(s) of this application and thus is not an invention "by another" (Office Action at pages 2-3).

Accordingly, without acquiescing to the grounds for the rejection, but rather to expedite allowance of the application, the present inventors have duly executed a Declaration under Rule 1.132 (filed concurrently herewith in 3 counterparts) in order to attest to the fact that if, and to the extent that any of the subject matter claimed in the instant application was disclosed but not claimed in either or both of the '864 Patent and the '096 Application, that subject matter was invented by the present inventors. The declarants also confirm that the instantly claimed invention (as recited in present claims 1-42) was not invented by Richard Formato, an inventor or co-inventor of one or more claims of the '864 Patent and the '096 Application. For all of the foregoing reasons, the '864 Patent and the '096 Application are not the work "of another" relative to the present application.

Once again, without acquiescing to the grounds for the rejections, they are nonetheless believed to be overcome in any case with today's Declaration. It is therefore respectfully requested that the rejections be withdrawn.

In view of the foregoing, Applicant believes the pending application is in condition for allowance.

PETITION FOR EXTENSION OF TIME AND FEE AUTHORIZATION

Applicant hereby requests a three month extension for filing this response. The Director is hereby authorized to charge the RCE fee along with the extension fee and any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 58399(47171). Any credit or overpayment should be applied to said Deposit Account.

Application No. 10/535,559
Amendment dated March 19, 2009
Following Advisory Action of January 12, 2009

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Respectfully submitted,

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